



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO.9 OF 2025

1. Manoj Jagdish Modi,
Aged about 51 years, Occ. : Business,
R/o Samta Colony, Khamgaon,
District; Buldhana.
 2. Munawwar Ali Saifuddin Babji,
Aged about 50 years,
Occ. : Business, R/o Babji Villa, Talao Road,
Khamgaon, District: Buldhana.
 3. Ashfaq Husain Saifuddin Babji,
Aged about 60 years, Occ : Business,
R/o Babji Villa, Talao Road, Khamgaon,
District : Buldhana.
 4. Vijaykumar Ratanlalji Rathi,
Aged about 59 years, Occ : Business,
R/o Swami Samartha Complex, Nandura
Road, Khamgaon, District : Buldhana.
 5. Satish Ratanlalji Rathi,
Aged about 50 years, Occ : Business,
R/o Swami Smartha Complex, Nandura
Road, Khamgaon, District; Buldhana.
 6. Ashok Shamrao Sonone,
Aged about 60 years, Occ. : Business,
R/o Shankar Nagar, Khamgaon,
District; Buldhana.
- (Ori.Def.Nos.1 to 6)
... **APPLICANTS**

...VERSUS...

1. Mahesh @ Madhusudan Vallabhdas Selarka,
Aged about 71 years, Occupation: Business,
R/o Shamlal Road, Khamgaon, Tq. Khamgaon,
District : Buldhana.
 2. Municipal Council, Khamgaon,
Through Chief Officer, Khamgaon,
Tq. Khamgaon, District : Buldhana.
- (Ori. Plaintiff)

(Ori. Defendant No.7)
...**NON-APPLICANTS**

Mr. A. C. Dharmadhikari, Advocate for the Applicants.
Mr. H. R. Gadhia a/w. Mr. Aniket Sawal, Advocate for Non-applicant
No.1.

CORAM : **MRS. VRUSHALI V. JOSHI, J.**
JUDGMENT RESERVED ON : 07.07.2025
JUDGMENT PRONOUNCED ON : 22.07.2025

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.

2. The applicant has challenged the order dated 27.09.2024 passed by the Civil Judge Senior Division, Khamgaon in Regular Civil Suit No.95/2023, thereby rejecting the application filed under Order VII Rule 11 of the Civil Procedure Code, 1908 (hereafter referred to as “C.P.C.”) by the applicant for rejection of the plaint.

3. The facts in brief are as under :

That, the non-applicant No.1 has filed a suit bearing Regular Civil Suit No.95/2023 for mandatory and prohibitory injunction as well as incidental reliefs. By the said suit, the relief prayed by the non-applicant No.1 is for violation of certain easementary rights because of ‘Mohan Market’, the building owned by these applicants. The consequential prayer is made to grant declaration that if such building is causing nuisance to the non-applicant No.1 and his inmates then

appropriate relief in the nature of injunction should be granted in favour of the non-applicant No.1.

4. It is urged by the learned Counsel for the applicants that the suit filed by the plaintiffs is barred by the law of limitation and Sections 147 and 149 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) and also barred under the provisions of Section 304 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

5. The learned Counsel for the applicants further argued that the plaint discloses that the plaintiff is seeking to challenge the construction of the building 'Mohan Market'. According to the plaintiff, the construction of this building is illegal as the defendants/applicants have not complied with the Development Control Rules. It is also the contention of the plaintiffs that the construction of the building is not in confirmation with Law, Rules and Regulations. If the provisions of the Maharashtra Regional Town Planning Act are seen, it appears to be clear that there are specific remedies available to the plaintiff and the suit is no such remedy rather such a suit is barred by the provisions of the MRTP Act. The Trial Court has not considered the effect of judgment passed by this Court in Writ Petition No.2083/2021 by which the dispute raised in the plaint stands already decided and no suit can be filed contrary to the said order. The non-applicants have deliberately suppressed the fact of

decision of the Writ Petition No. 2083/2021 which means that not only the issue raised in the plaint stands decided by the judgment of this Court but the plaint needs to be rejected for suppressing material facts and documents and such plaint needs to be rejected by utilizing powers under Order VII Rule 11 of the Code of Civil Procedure. Hence, prayed to set aside the order passed by the Trial Court rejecting the application filed by the applicants under Order VII Rule 11 of the C.P.C..

6. The learned Counsel for the non-applicants has stated that the relief claimed by the non-applicants in Civil Suit is about injunction. While considering the application under Order VII Rule 11, it is the requirement of law that the Court should consider the contents in plaint only and not other documents.

7. The prayer of the plaintiff in the suit is for mandatory injunction against defendant No.7 to determine whether the construction of 'Mohan Market' is dangerous and hazardous to the plaintiff's property and whether it confirms to the applicable laws. The plaintiff has stated that the construction of 'Mohan Market' is adjacent to the property and is causing a nuisance to him and his family obstructing their right to privacy. He sought prohibitory injunction against the defendant Nos.1 to 6 to prevent them from causing further nuisance, which comes under the jurisdiction of Civil Court. It cannot be addressed under MRTP Act as the permanent injunction cannot be granted by the authorities. The right to

privacy and the easementary right is not decided by this Court in Writ Petition No.2083/2021, therefore, the bar under Section 149 of the MRTP Act does not apply and the jurisdiction of Civil Court is not excluded. Hence prayed to reject the Civil Revision Application.

8. Heard both the learned Counsel for the parties.

9. For the purposes of deciding an application under Order VII Rule 11 of the C.P.C., the averments in the plaint are germane. The Court has to look into the averments in the plaint and the same can be exercised by the Trial Court. According to the applicants, the plaintiff has suppressed the fact of the order passed by this Court in writ petition about construction of 'Mohan Market' by clever drafting. The plaintiff has created the illusion of cause of action. He has relied on the judgment of the Hon'ble Apex Court in the matter of *Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniyamman Educational Trust* reported in **(2012) 8SCC 706**, wherein the Hon'ble Apex Court has observed in paragraph Nos.12, 13 and 15 as under :

"12. It is also useful to refer the judgment in T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467, wherein while considering the very same provision, i.e. Order 7 Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

"5.The learned Munsif must remember that if on a meaningful – for formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that

the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them”

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the abovereferred decision, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code.

13. *While scrutinizing the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.*

15. *It is useful to refer the judgment in Bloom Dekor Ltd. vs. Subhash Himatlal Desai (1994) 6 SCC 322, wherein a three-Judge Bench of this Court held as under :*

“28. By ‘cause of action’ it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court, (Cooke v. Gill, 1873 LR 8 CP 107); in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.”

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.”

Disclosure of every fact is necessary to set out in clear term. A cause of action must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is mandatory that in order to get relief, the plaintiff has to aver all material facts. It appears from the record that filing of writ petition and participation of plaintiff is mentioned in the plaint. The order has not been brought on record is not a suppression of fact.

10. The learned Counsel for the non-applicant No.1/plaintiff has relied on the latest judgment of the Hon'ble Apex Court in the matter of *H. S. Deekshit and Anr. Vs. M/s. Metropoli Overseas Limited and Ors.* reported in **2022 LiveLaw (SC) 703** wherein it is stated that the averments in the plaint alone are to be examined while considering the application for rejection of the plaint, no other extraneous factors can be taken into consideration. That the applicant has reiterated that there is suppression of material fact. As the filing of writ petition is mentioned in the plaint, it is the requirement of law to consider the contents in the plaint only. Therefore, the submission made by the applicants about the rejection of the plaint due to suppression of the fact holds no water.

11. It appears that according to the plaintiff, there is an alternate remedy. Section 47 (1) of the Maharashtra Regional and Town Planning Act, 1966 clearly indicates that the right to file an appeal has

been conferred only on an applicant who is aggrieved either by an order granting permission on conditions or by a refusal of permission. No appeal is provided against an order granting unconditional permission. The right to file an appeal is available only to an applicant aggrieved by the grant of conditional permission or the refusal of permission. Third person other than the applicant, who is aggrieved by the grant of permission is not granted the right to file an appeal. It is observed in case of *Satish s/o. Gayacharan Trivedi Vs. Dr. Gopal Ramnarayan Mundhada and Ors.* reported in **(2015) 5 Mh.L.J. 463** that the Civil Court has no jurisdiction to examine the validity of the permission granted under Section 149 of the MRTP Act but can examine whether the construction was carried out contrary to the sanctioned plan. On perusal of the plaint, it appears that the plaintiff is not challenging the grant of permission but is challenging the construction carried out by the defendants which allegedly affects his easementary rights. The plaintiff has already disclosed about the writ petition contested by him, there is no suppression. As the sanction is not challenged by the plaintiff and he is agitating his easementary rights, the question of validity of permission is not challenged.

12. The plaintiff is praying for mandatory injunction and is claiming about his easementary right, seeking declaration that the construction of the building 'Mohan Market' is hazardous and dangerous

to the plaintiff, is totally a different issue. Therefore, by considering the authorities, the Trial Court has rightly rejected the application. The interference at the hands of this Court is not required. Hence, the application stands dismissed.

Rule is discharged.

(MRS. VRUSHALI V. JOSHI, J.)